IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1403 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAM @ FAKIRBHAI BHIKABHAI PATEL

Versus

UNDER SECRETARY TO THE GOVT. OF INDIA

Appearance:

MR MAHENDRA K PATEL for Petitioner

MS PJ DAVAWALA for Respondent No. 1, 2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 08/02/2001

ORAL JUDGEMENT

1. The petitioner who is more than 80 years old had applied for grant of pension under the Swatantra Sainik Samman Pension Scheme 1980 with necessary documents in support of his claim. This is a scheme floated by the

Central Government.

2. The petitioner's application in the first round did not find favour with the Central Government and the petition being Special Civil Application No.6643 of 1999 was moved before this Court. This Court by its order dated 11.10.1999 (Coram : Mr.Justice M.S.Shah) passed the following operative order :

"3. Mr.U.I.Vyas, learned Addl.Standing Counsel appearing in the Central Government states that he has no instructions in the matter. However, in view of the aforesaid clear stand of the State Government as mentioned in the letter dated 2.5.98, a copy of which was also supplied to Mr.U.I.Vyas, this petition deserves to be allowed and the Union of India is required to be directed to consider the petitioner's case for pension under SSS Pension Scheme,1980 as expeditiously as possible and in any case within one month from the date of the receipt of a certified copy of this order or the writ of this Court, whichever is earlier.

4. The petition has been required to be filed in view of the letter dated 26.5.1999 (Annexure-G) from the Under Secretary to the Government of India and Ministry of Home Affairs which is absolutely contrary to the letter dated 2.5.1998 of the State Government. It is therefore, just and proper to saddle respondent No.1 with the costs of this petition which are quantified at Rs.2,000/-. The costs shall be paid within one month from the date of receipt of a certified copy of this order."

3. In pursuance of this order the State Government, as is required, made a recommendation dated 19.11.1999 along with various supporting documents. However, vide order dated 30.11.1999 the claim of the petitioner was rejected stating that there were over writings in the certificate issued by the co-prisoner and moreover the date of release from Ahmedabad Central Jail, Sabarmati had also not been specified. It was therefore stated that as per the scheme the period of imprisonment of over six months had not been proved and hence,the petitioner cannot be treated to be eligible for pension under the Central Scheme.

4. On receipt of this order dated 30.11.1999 the petitioner wrote to the Central Government on 4.12.1999

requesting reconsideration of its earlier stand. The Central Government vide its communication dated 11.1.2000 stated that the representation for review should be forwarded only through the State Government. Accordingly the petitioner informed on 17.1.2000 that his representation for review had already been forwarded through the State Government vide letter No.POS-1297-KHD-407-GH.1 dated January 7,2000.

5. When the matter was taken up for hearing today the affidavit dated 22.5.2000 has been placed on record on behalf of the respondent no.1. In the said affidavit the facts which are already there in earlier order dated 30.11.1999 have been reiterated with emphasis. We have gone through the said affidavit in reply filed by respondent no.1 and have also taken into consideration the submissions made by Ms.P.J.Davawala on behalf of respondent no.1. We find from the affidavit in reply that the entire correspondence culminating in representation for review dated 7.1.2000 have not been taken into consideration by the authority concerned. When this was pointed out to the learned Counsel for respondent no.1 she readily agreed and accepted that affidavit in reply pertained only to events upto 30.11.1999 and further correspondence including recommendation for review by the State Government along with the clarificatory certificate dated 10.12.1999 issued by the co-prisoner have not been taken into consideration by the authority.

6. In view of the aforesaid fact situation this petition deserves to be allowed and the Union of India is hereby directed to reconsider the petitioner's case for pension under the Swatantra Sainik Sanman Pension Scheme,1980 in a favourable manner. Respondent No.1 is directed to decide the recommendation for review taking into consideration all the documents and correspondence produced both before and after the order dated 30.11.1999 and such decision should be arrived at as expeditiously as possible and in any case within four weeks from the date of the receipt of the writ of this Court or certified copy of this order, whichever is earlier. The order dated 30.11.1999 (Annex."D") passed by respondent no.1 is hereby quashed. In view of the fact that the representation for review had been forwarded through the State Government as far back as 7.1.2000 and yet respondent no.1 has not taken the same into consideration even at the stage of swearing the affidavit in reply in May,2000, it is just and proper that respondent no.1 should be saddled with costs of this petition which are quantified at Rs.2,000/-. The costs shall be paid within

a period of four weeks from the date of the receipt of certified copy of this order. Rule made absolute in the aforesaid terms.

Sd/-
(D.A.Mehta,J)

m.m.bhatt